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8 BEFORE THE  
BOARD OF PODIATRIC MEDICINE  
9 MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation  
12 Against:

No. D-4280

13 BRADLEY G. BENSON, D.P.M.  
14 875 East Canal Drive, #10  
Turlock, CA 95380

ACCUSATION

15 License No. E-2937

16 Respondent.  
17

18 JAMES H. RATHLESBERGER, for causes for discipline,  
19 alleges:

20 1. Complainant James H. Rathlesberger makes and files  
21 this accusation in his official capacity as Executive Officer of  
22 the Board of Podiatric Medicine, Medical Board of California,  
23 (hereinafter referred to as "Board").

24 2. On June 7, 1982, the Board issued license number  
25 E-2937 to Bradley G. Benson, D.P.M. (hereinafter referred to as  
26 "respondent"). The license is current and in good standing with  
27 an expiration date of April 30, 1990.

1           3. Under Business and Professions Code section 2234,  
2 the Board shall take action against the holder of a license to  
3 practice podiatric medicine who is guilty of unprofessional  
4 conduct which includes:

5           . . . . .

6           (b) Gross Negligence

7           (d) Incompetence

8           4. Business and Professions Code section 2497  
9 provides:

10           "(a) The board may order the denial of an application  
11 for, or the suspension of, or the revocation of, or the  
12 imposition of probationary conditions upon, a certificate to  
13 practice podiatric medicine for any of the causes set forth  
14 in Article 12 (commencing with Section 2220) in accordance  
15 with Section 2222.

16           "(b) The board may hear all matters, including but not  
17 limited to, any contested case or may assign any such  
18 matters to an administrative law judge. The proceedings  
19 shall be held in accordance with Section 2230. If a  
20 contested case is heard by the board itself, the  
21 administrative law judge who presided at the hearing shall  
22 be present during the board's consideration of the case and  
23 shall assist and advise the board.

24           5. Business and Professions Code section 2497.5  
25 provides:

26           "(a) The board may request the administrative law  
27 judge, under his or her proposed decision in resolution of a

1 disciplinary proceeding before the board, to direct any  
2 licensee found guilty of unprofessional conduct to pay to  
3 the board a sum not to exceed the actual and reasonable  
4 costs of the investigation and prosecution of the case.

5 "(b) The costs to be assessed shall be fixed by the  
6 administrative law judge and shall not in any event be  
7 increased by the board. When the board does not adopt a  
8 proposed decision and remands the case to an administrative  
9 law judge, the administrative law judge shall not increase  
10 the amount of any costs assessed in the proposed decision.

11 "(c) When the payment directed in the board's order  
12 for payment of costs is not made by the licensee, the board  
13 may enforce the order for payment by bringing an action in  
14 any appropriate court . . . This right of enforcement  
15 shall be in addition to any other rights the board may have  
16 as to any licensee directed to pay costs.

17 "(d) In any judicial action for the recovery of costs,  
18 proof of the board's decision shall be conclusive proof of  
19 the validity of the order of payment and the terms for  
20 payment.

21 "(e)(1) Except as provided in paragraph (2), the board  
22 shall not renew or reinstate the license of any licensee who  
23 has failed to pay all of the costs ordered under this  
24 section.

25 "(2) Notwithstanding paragraph (1), the board may, in  
26 its discretion, conditionally renew or reinstate for a  
27 maximum of one year the license of any licensee who

1 demonstrates financial hardship and who enters into a formal  
2 agreement with the board to reimburse the board within that  
3 one year period for those unpaid costs.

4 "(f) All costs recovered under this section shall be  
5 deposited in the Podiatry Fund as a reimbursement in either  
6 the fiscal year in which the costs are actually recovered or  
7 the previous fiscal year, as the board may direct.

8 6. Respondent has subjected his license to discipline  
9 under Business and Professions Code section 2234 on the grounds  
10 of unprofessional conduct as defined by subsections (b) Gross  
11 Negligence and (d) Incompetence as if more specifically set forth  
12 below:

13 Respondent was grossly negligent and incompetent in his  
14 evaluation, diagnosis, care, treatment, and 1984 surgery  
15 performed on patient Aileen R.

16 On September 6, 1984, 63 year old female patient Aileen  
17 R. underwent surgery at Oak Valley Hospital, Oakdale, CA  
18 performed by respondent for removal of neuromas of the third  
19 inter-space bilaterally and the second inter-space of her left  
20 foot. Surgery was completed on an out-patient basis with no  
21 complications at the time of surgery. Patient Aileen R. was  
22 released to her home with respondent making numerous home visits.

23 In the ensuing postoperative course patient Aileen R.  
24 developed gangrene of the third digit left foot with subsequent  
25 amputation of the third digit left foot on October 4, 1984. The  
26 amputation was performed by H. M. Goodman, M.D. at Doctors  
27 Hospital, Modesto. This amputation failed to heal appropriately.

1 She developed further necrosis which eventually led to a  
2 transmetatarsal amputation of her left foot on November 8, 1984.  
3 This surgery was performed by Rodney Cornelsen, M.D. at Doctors  
4 Hospital, Modesto.

5 Patient Aileen R. had a well-documented history of  
6 peripheral vascular disease. A femoralpopliteal bypass surgery  
7 was performed bilaterally in 1976 and again in 1977.

8 The most recent vascular workup was in 1980 for which  
9 patient Aileen R. underwent arteriography to the lower  
10 extremities revealing further progression of the vascular  
11 disease.

12 Respondent visited patient Aileen R. at her home. Her  
13 postoperative course was essentially uneventful until September  
14 17, 1984. At that time respondent noted mild maceration in the  
15 distal aspect of the incisions of the third interspace  
16 bilaterally. On September 20, 1984, respondent noted significant  
17 tenderness in the Achilles' tendon and anterior tendons of the  
18 ankle. On September 27, 1984, respondent recognized a bacterial  
19 infection and that the incision was not completely closed. On  
20 October 1, 1984, respondent noted that the third toe was dark  
21 purple in color. On October 4, 1984, patient Aileen R. was taken  
22 to Memorial North Hospital to a cardio-vascular lab for a  
23 segmental doppler pressure evaluation of the left lower  
24 extremity. The results revealed an ankle-arm index of 0.45.  
25 This was to the left foot. There were no arterial sounds to the  
26 third digit; the fourth and second digits' signals could be  
27 obtained. On October 4, 1984, Dr. Goodman amputated the third

1 toe of the left foot. The amputation site granulated somewhat  
2 and a split-thickness skin graft was performed to cover the  
3 wound; however, the operative site had become infected and  
4 further necrosis was evident to the second digit as well as the  
5 plantar aspect of the first digit. The patient then underwent a  
6 transmetatarsal amputation.

7 Respondent was grossly negligent and incompetent in his  
8 care and treatment of patient Aileen R. as is more specifically  
9 set forth below:

10 A.

11 FAILURE TO PROPERLY EVALUATE  
12 PATIENT PREOPERATIVELY

13 1. Respondent failed to adequately perform a  
14 preoperative evaluation of patient Aileen R. The past medical  
15 history respondent took was totally inadequate and failed to  
16 adequately disclose the nature of the vascular surgery which  
17 occurred in 1976 and 1977 as well as the repeat evaluation with  
18 arteriogram in 1980.

19 If a proper preoperative evaluation were performed the  
20 severe peripheral vascular disease would have been recognized and  
21 this patient would not have been considered a proper surgical  
22 candidate.

23 Respondent failed to recognize the significant vascular  
24 disease in this patient. The failure to diagnose this

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1 significant vascular problem placed patient Aileen R. in a  
2 position where her limbs were at significant risk.

3 B.

4 FAILURE IN MANAGEMENT OF  
5 POSTOPERATIVE INFECTION

6 Respondent's failure to promptly diagnose and properly  
7 treat this postoperative wound infection constitutes gross  
8 negligence and incompetence.

9 Respondent failed to obtain a wound culture which would  
10 have identified the organisms present in the wound and permitted  
11 selection of the proper antibiotic. Respondent's failure to  
12 promptly recognize the postoperative wound infection and to  
13 properly treat this infection placed patient Aileen R's limb and  
14 life at serious risk.

15 C.

16 FAILURE TO PROMPTLY DIAGNOSE AND INITIATE  
17 TREATMENT OF THE VASCULAR COMPLICATION

18 Respondent finally recognized the compromised  
19 circulation to the third toe but allowed it to continue and  
20 progress without offering any specific treatment other than  
21 observation until the toe was no longer salvageable. The patient  
22 expressed concern on several occasions that the circulation was  
23 severely compromised to the toe. Only when wet gangrene was  
24 fully developed and the toe was entirely gangrenous did  
25 respondent initiate a diagnostic work-up. This diagnosis came  
26 too late. Respondent failed to recognize and differentiate  
27 normal circulation versus partially impaired circulation versus

1 total tissue necrosis on patient Aileen R's foot. Respondent  
2 failed to recognize the need for prompt vascular intervention  
3 when circulatory compromise was recognized.

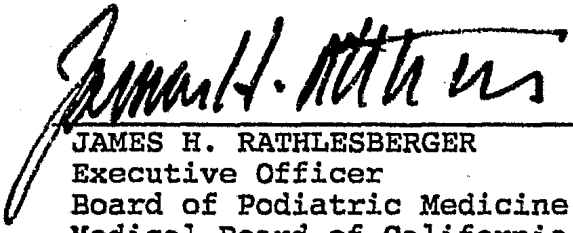
4 WHEREFORE, complainant prays that a hearing be had and  
5 that the Board make its order:

6 1. Revoking or suspending License Number E-2937,  
7 issued to respondent Bradley G. Benson, D.P.M.

8 2. Recovery of actual and reasonable costs of the  
9 investigation and prosecution of this case.

10 3. Taking such other and further action as may be  
11 deemed proper and appropriate.

12 DATED: June 20, 1990

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15 JAMES H. RATHLESBERGER  
16 Executive Officer  
17 Board of Podiatric Medicine  
18 Medical Board of California  
19 Department of Consumer Affairs  
20 State of California

21 Complainant

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